TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~545~~ 236.

THE UNITED STATES, APPELLANT,

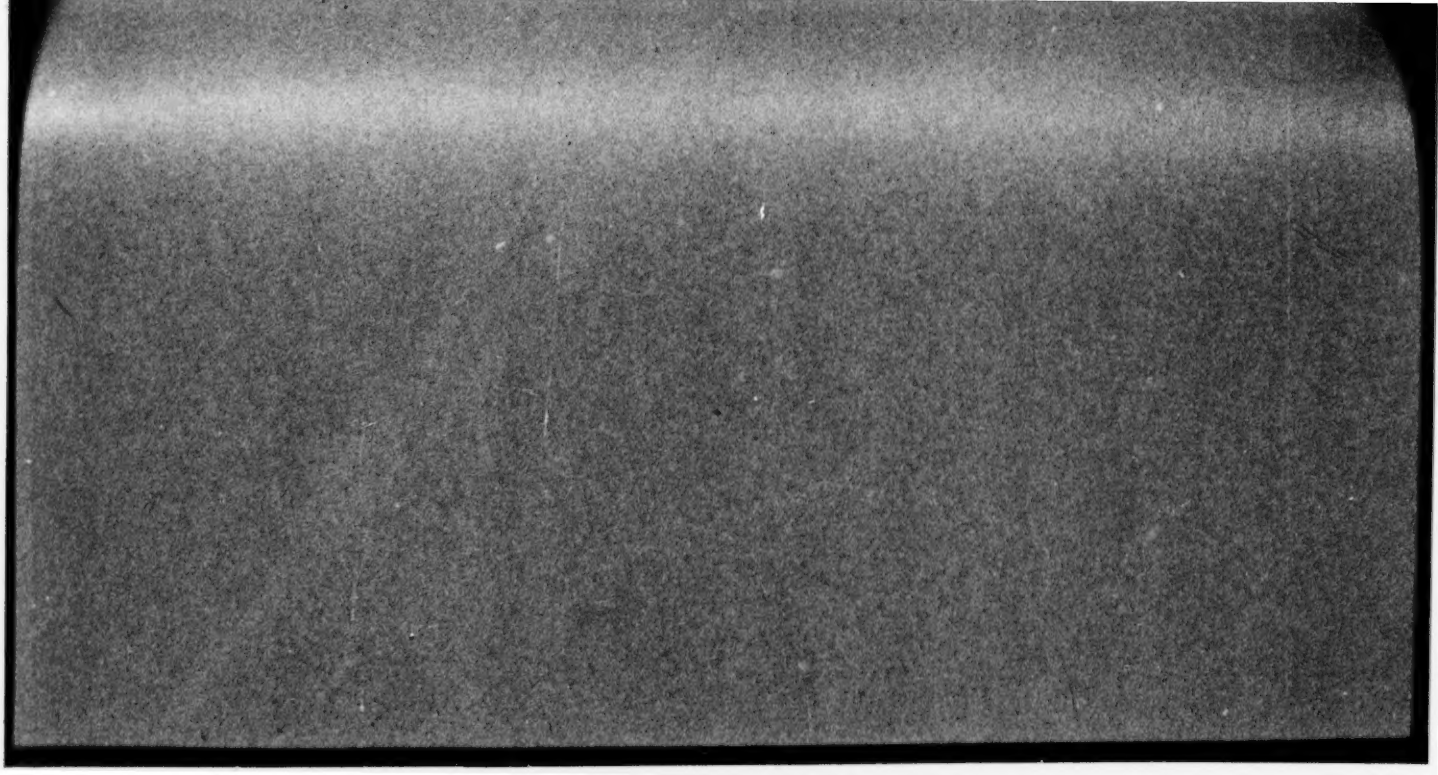
vs.

JOHN C. SWEET.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 7, 1902.

(16396.)



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22845—02

1 In the Court of Claims.

JOHN C. SWEET, v. THE UNITED STATES. } No. 21555.

I.—PETITION. *Filed November 21, 1899.*

To the honorable the Court of Claims:

The claimant, John C. Sweet, respectfully represents:

1. That he was originally mustered into the military service of the United States at Camp Ramsey, in the city of St. Paul, in the State of Minnesota, on the 17th day of August, 1898, as 2nd lieutenant in Company A, 15th Regiment Minnesota Volunteers, and served honorably in said regiment within the limits of the United States continuously until the 15th day of October, 1898.

2. That on said day he was honorably discharged from said service at Camp Meade, Pennsylvania, upon tender of his resignation.

3. That by the provisions of §1289 of the Revised Statutes of the United States he became entitled, upon discharge as aforesaid, to transportation and subsistence from the place of his discharge to the place of his enlistment, enrollment, or original muster into the service, but was not furnished the same and is therefore entitled to be allowed travel pay and commutation of subsistence from the place of his discharge to the place of his enrollment, computed at the rate of one day for every twenty miles. That the distance from Camp Meade, Penn., to St. Paul, Minn., or to claimant's residence, Minneapolis, Minn., is 1,147 miles, and his rate of pay per day, at the time of muster out and discharge, was three dollars and eighty-nine cents ($3.89).

4. That by reason of the facts aforesaid there became due to him two hundred and twenty-five dollars and fifty-two cents ($225.52), but no claim therefor has been presented to the Treasury Department because the Comptroller of the Treasury has already ruled that travel pay under §1289 of the Revised Statutes aforesaid is not due to officers who

2 were discharged upon acceptance of resignation.

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant prays judgment for two hundred and twenty-five dollars and fifty-two cents ($225.52).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

STATE OF MINNESOTA,
County of Hennepin, ss:

John C. Sweet, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

JOHN C. SWEET.

Subscribed and sworn to before me this 18th day of November, 1899.

[SEAL.] W. W. BARDWELL,
Notary Public, Hennepin Co., Minn.

II.—TRAVERSE. *Filed February 27, 1901.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

3 III.—FINDINGS OF FACT AND CONCLUSION OF LAW. *Filed December 2, 1901.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

1. Claimant was mustered into the military service of the United States at Camp Ramsey, in the city of St. Paul, in the State of Minnesota, his place of residence then being Minneapolis, in said State, on the 17th day of August, 1898, as 2d lieutenant in Company A, 15th Regiment Minnesota Volunteers.

2. He served honestly and faithfully in said regiment within the limits of the United States until the 15th day of October, 1898, when he was honorably discharged the service under Special Orders, number 244, Headquarters of the Army, as follows:

"Special Orders, } "HEADQUARTERS OF THE ARMY,
"No. 244. } "ADJUTANT-GENERAL'S OFFICE,
"*Washington, October 15, 1898.*

"93. By direction of the Secretary of War, the following-named officers, having tendered their resignations, are honorably discharged the service of the United States, to take effect this date.

"Captain S. Schieffelin Stebbins, 12th New York Volunteer Infantry.
"Second Lieutenant John C. Sweet, 15th Minnesota Volunteer Infantry.
"By command of Major-General Miles:

"H. C. CORBIN,
"*Adjutant-General.*"

When discharged he was with his regiment in line of duty at Camp Meade, Pa., which is distant from the claimant's residence, Minnesota, Minn., or his place of muster in St. Paul, Minn., 1,147 miles.

3. His daily rate of pay at the time of muster out and discharge was $3.89.

4. The claimant was not furnished transportation or subsistence in kind, but returned to his residence at Minneapolis, Minnesota,
4 at his own expense. Nor has he been paid travel pay or commutation of subsistence.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to recover the sum of $222.89.

BY THE COURT.

IV.—JUDGMENT OF THE COURT.

JOHN C. SWEET
v.
UNITED STATES. } No. 21555.

At a Court of Claims, held in the city of Washington on the 2d day of December, 1901, judgment was entered in the above-entitled case as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, John C. Sweet, do have and recover of and from the United States the sum of two hundred and twenty-two dollars and eighty-nine cents ($222\frac{89}{100}$).

BY THE COURT.

5 V.—APPLICATION FOR AND ALLOWANCE OF APPEAL.

JOHN C. SWEET
v.
UNITED STATES. } No. 21555.

From the judgment rendered in the above-entitled cause, on the 2nd day of December, 1901, in favor of the claimant, the defendants, by their Attorney-General, on the 27th day of January, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Filed January 27, 1902.
Ordered that this application for appeal be allowed as prayed for.

BY THE COURT.

January 27, 1902.

6 Court of Claims.

JOHN C. SWEET
vs. } No. 21555.
UNITED STATES.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true copies of the pleadings in the above-entitled cause of the findings of fact and conclusion of law filed by the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 4th day of February, 1902.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No., 18398, Court of Claims. Term No., 545. The United States, appellant, *vs.* John C. Sweet. Filed February 7th, 1902.

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FILE COPY.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
JOHN C. SWEET, APPELLEE. } No. 236.

ON APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

FRANKLIN W. COLLINS,
Special Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
JOHN C. SWEET, APPELLEE. } No. 236.

ON APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

This is a companion case to that of the *United States* v. *Peter W. Barnett* (No. 235), the only difference being that Sweet was an officer, while Barnett was a private soldier.

Sweet brings his suit under the provisions of section 1289, Barnett under section 1290, of the Revised Statutes of the United States. The only variance in the text of said sections is that whereas in the former section the word "officer" is used, in the latter the word "soldier" takes its place.

The same arguments and authorities are undoubtedly applicable to each case.

The facts in this case are as follows:

Sweet was mustered into the service of the United States at Camp Ramsey, in the city of St. Paul, in the State of Minnesota, August 17, 1898, as second lieutenant in Company A, Fifteenth Regiment Minnesota Volunteers, and served honorably in said regiment within the limits of the United States continuously until October 15, 1898. On said last-mentioned day he was honorably discharged from said service, at Camp Meade, Pa., upon tender of his resignation, under Special Orders, No. 244, as follows:

> Special Orders, No. 244.
>
> HEADQUARTERS OF THE ARMY,
> ADJUTANT-GENERAL'S OFFICE,
> *Washington, October 15, 1898.*
>
> * * * * *
>
> 93.
>
> By direction of the Secretary of War, the following-named officers, having tendered their resignations, are honorably discharged the service of the United States, to take effect this date:
>
> Capt. S. Schieffelin Stebbins, Twelfth New York Volunteer Infantry;
>
> Second Lieut. John C. Sweet, Fifteenth Minnesota Volunteer Infantry.
>
> * * * * *
>
> By command of Major-General Miles:
>
> H. C. CORBIN,
> *Adjutant-General.*

When discharged he was with his regiment, in line of duty, at Camp Meade, Pa., which is distant from the claimant's residence, Minneapolis, Minn., or his place of muster in, St. Paul, Minn., 1,147 miles.

His daily rate of pay at the time of muster out and discharge was $3.89.

He was not furnished transportation or subsistence in kind, travel pay, or commutation of subsistence, for the reason that his discharge was granted upon his resignation, and was by way of favor to him and for his convenience, and hence that he was not entitled to receive or recover the same, under the provisions of section 1289, Revised Statutes.

ASSIGNMENT OF ERROR.

The Court of Claims erred in rendering judgment against the appellant and in favor of the appellee on the findings of fact.

BRIEF.

The attention of the court is respectfully invited to the arguments presented and the list of authorities cited in appellant's brief in the Barnett case (No. 235), which are equally applicable to the case at bar, and which render their reiteration and representation unnecessary.

The contention of learned counsel for appellee, in the court below, that if officers discharged on their own application are not entitled to the benefits of section 1289 there would be but little for it to operate upon, in view of the fact that officers of the Army ordinarily hold their commissions by a tenure of good behavior, is not sound in principle or supported by the facts.

Congress, in the enactment of the law in question, did not and could not know how many or how few

officers of the Army in future times its provisions would affect. It was the intendment of the law, however, to provide, as far as possible, for such exigencies as might arise. It would, indeed, be surprising if it did not occur to the law-making body, in connection with the enactment of such legislation, that the necessity of reducing the military forces of the United States would exist from time to time, and that involuntary discharges of its officers would therefore follow.

That there have been many general reductions of the Army since the original enactment of this law is a matter of historical knowledge, notably at the close of the civil war, also in 1870, and again at the close of the Spanish-American war.

If the spirit of the law be consulted and respected, then the construction of the department charged with the execution thereof will be adopted by the court.

The discharge contemplated by said statute is not a technical discharge, which is really in the nature of a release, at the officer's request, by way of favor to him and for his own convenience, but rather *an involuntary discharge.*

A simple mathematical calculation will suffice to show the unreasonableness of any other interpretation of this section.

The appellee's entire period of service in the United States Army was two days less than two calendar months. During that period he presumably drew second lieutenant's pay, which, at $116.67 per month, would amount to $229.55, or thereabouts. Adding this to the expense to the Government of his

transportation from St. Paul, Minn., where he was mustered into the service, not to mention the cost of his subsistence and maintenance while in the service, and then if there should be added to these sums the amount claimed to be due him for travel pay and commutation of subsistence from Camp Meade, Pa., to St. Paul, Minn., or the sum of $222.89, we shall have a grand total of upward of $500 which this officer would have cost the United States for his services for the space of less than two months. Surely, an expensive luxury.

If the appellee's right to recover under this statute be determined in his favor by the courts, the United States may be repeatedly required to furnish travel pay and subsistence to officers appointed to fill the places their predecessors have vacated, and this almost without limit.

It is but reasonable to suppose that the discharge contemplated by the law, which entitles the officers to its benefits, is one which occurs at the expiration of the full term of service, or at least one which occurs at the instance of the military authorities of the United States, and not at the instance and request and for the convenience and benefit of the officer himself.

Respectfully submitted.

FRANKLIN W. COLLINS,
Special Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

O

IN THE

Supreme Court of the United States.

October Term, 1902.

THE UNITED STATES, *Appellant*,
v.
JOHN C. SWEET. } No. 236.

BRIEF FOR APPELLEE.

I. Statement of the Case.

This is a claim of an officer of the army for travel pay, on discharge from the military service of the United States, from the place of his discharge to the place of his residence and muster into the service.

The claim is based upon section 1289 of the Revised Statutes, which is as follows:

"When an officer is discharged from the service, except by way of punishment for an offense, he shall be allowed transportation and subsistence from the place of his discharge to the place of his residence at the time of his appointment or to the place of his original muster into the service. The Government may furnish the same in kind, but in case it shall not do so, he shall be allowed travel-pay and commutation of subsistence, according to his rank, for such time as may be sufficient for him to travel from the place of discharge to the place of his residence, or original muster into service, computed at the rate of one day for every twenty miles."

The facts were found by the Court of Claims as follows (Rec. pp. 2, 3):

"1. Claimant was mustered into the military service of the United States at Camp Ramsey, in the city of St. Paul, in the State of Minnesota, his place of residence then being Minneapolis, in said State, on the 17th day of August, 1898, as 2d lieutenant in Company A, 15th Regiment Minnesota Volunteers.

"He served honestly and faithfully in said regiment within the limits of the United States until the 15th day of October, 1898, when he was honorably discharged the service under Special Orders, No. 244, Headquarters of the Army, as follows:

'HEADQUARTERS OF THE ARMY,

'SPECIAL ORDERS, 'ADJUTANT-GENERAL'S OFFICE,
'No. 244. 'WASHINGTON, *October 15, 1898.*

'93. By direction of the Secretary of War, the following-named officers, having tendered their resignations, are honorably discharged the service of the United States, to take effect this date.

'Captain S. Schieffelin Stebbins, 12th New York Volunteer Infantry.

'Second Lieutenant John C. Sweet, 15th Minnesota Volunteer Infantry.

'By command of Major-General Miles:

'H. C. CORBIN,
'*Adjutant-General.*'

"When discharged he was with his regiment in line of duty at Camp Meade, Pa., which is distant from the claimant's residence, Minneapolis, Minn., or his place of muster in St. Paul, Minn., 1,147 miles.

"3. His daily rate of pay at the time of muster out and discharge was $3.89.

"4. The claimant was not furnished transportation or subsistence in kind, but returned to his residence at Minneapolis, Minnesota, at his own expense. Nor has he been paid travel pay or commutation of subsistence."

The court gave judgment in his favor for the amount of his travel pay at the statutory rate, amounting to two hundred and twenty-two dollars and eighty-nine cents ($222.89) (rec. p. 3).

The United States thereupon appealed (rec. p. 3).

II. Brief of Argument.

No opinion was delivered by the Court of Claims in this case, doubtless for the reason that the case was considered to be, in all respects, identical in principle with that of Peter W. Barnett, which was decided at the same time, and in which a full opinion was delivered. The only difference between the two cases consists in the fact that Barnett was an enlisted man, whose right to travel pay depended upon section 1290 of the Revised Statutes, while the present claimant, John C. Sweet, was an officer, whose right depends upon section 1289.

Comparison of the two sections shows that, while there is a slight difference of language, it does not affect the question involved in the present case. The officer, equally with the enlisted man, is entitled to the statutory allowance for travel on discharge, "except by way of punishment for an offense."

The *Barnett* case immediately precedes the present one on the calendar of this court. The question whether an enlisted man, discharged at his own request and not by way of punishment for an offense, is entitled to his traveling allowances, is discussed in the opinion of the Court of Claims in that case, and in our brief submitted in this court. Precisely the same considerations apply to the claim of an officer, discharged upon tender of his resignation, to the travel allowance, under section 1289.

For the reasons assigned by us in the *Barnett* case, it is submitted that the judgment of the Court of Claims in this case is correct and should be affirmed.

GEORGE A. KING
WILLIAM B. KING,
Attorneys for Appellee.

"1. Claimant was mustered into the military service of the United States at Camp Ramsey, in the city of St. Paul, in the State of Minnesota, his place of residence then being Minneapolis, in said State, on the 17th day of August, 1898, as 2d lieutenant in Company A, 15th Regiment Minnesota Volunteers.

"He served honestly and faithfully in said regiment within the limits of the United States until the 15th day of October, 1898, when he was honorably discharged the service under Special Orders, No. 244, Headquarters of the Army, as follows:

'HEADQUARTERS OF THE ARMY,
'SPECIAL ORDERS, } 'ADJUTANT-GENERAL'S OFFICE,
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"3. His daily rate of pay at the time of muster out and discharge was $3.89.

"4. The claimant was not furnished transportation or subsistence in kind, but returned to his residence at Minneapolis, Minnesota, at his own expense. Nor has he been paid travel pay or commutation of subsistence."

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Comparison of the two sections shows that, while there is a slight difference of language, it does not affect the question involved in the present case. The officer, equally with the enlisted man, is entitled to the statutory allowance for travel on discharge, "except by way of punishment for an offense."

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For the reasons assigned by us in the *Barnett* case, it is submitted that the judgment of the Court of Claims in this case is correct and should be affirmed.

GEORGE A. KING
WILLIAM B. KING,
Attorneys for Appellee.

Supreme Court of the United States.

No. 236.—October Term, 1902.

The United States, Appellant, *vs.* John C. Sweet. } Appeal from the Court of Claims.

[April 27, 1903.]

Mr. Justice Holmes delivered the opinion of the Court

This case comes here by appeal from a judgment of the Court of Claims in favor of the petitioner, Sweet. The petitioner was a second lieutenant of volunteers in the United States Army, tendered his resignation, and was honorably discharged on October 15, 1898. He was mustered into the service at St. Paul, Minnesota, his residence being Minneapolis. The place of his discharge was Camp Meade, Pennsylvania. He was not furnished transportation or subsistence, but returned to his residence at his own expense, and later brought this petition to recover travel pay and commutation of subsistence under Rev. Stat. § 1289, as amended by the act of February 27, 1877, c. 69, 19 Stat. 243, 244. That section allows the items demanded "when an officer is discharged from the service, except by way of punishment for an offense." The question whether the statute extends to cases like the present has been before this court twice, but has not been decided authoritatively. In one case the court was equally divided, *United States* v. *Price*, No. 60, December Term, 1870; *S. C.*, 4 C. Cls. R. 164. In the other the decision went off upon another point. *United States* v. *Thornton*, 160 U. S. 654; *S. C.*, 27 C. Cls. R. 342.

It is admitted that the settled practice of the War Department and of the Treasury has been to deny the allowances claimed when an officer or soldier is discharged at his own request, for his own pleasure or convenience. *Whitmeyer*, 3 Dec. of the Comptroller of the Treasury, 397, 398; *Weber*, id. 640; 5 id. 113, 117; ibid. 939, 941; *Bridges*, Second Comptroller's Letter Book, vol. 18, p. 184; *Weevil*, id. vol. 26, p. 296. The weight of a contemporaneous and long-continued construction of a statute by those charged with its execution is well recognized in cases open to reasonable doubt. *United States* v. *Johnston*, 124 U. S. 236, 253; *United States* v. *Finnell*, 185 U. S. 236, 244. But it is said that in this case the language of the statute admits of no doubt. It is argued that the words "except by way

of punishment for an offense" exclude the implication of other exceptions to the rule. Some force was attributed also to the amendment to the Revised Statutes, which substituted for "honorably discharged from the service" the present words "discharged from the service, except by way of punishment for an offense." The change, however, is merely a recurrence to the language of the earlier statutes under which the practice of the War Department grew up, so that no particular weight can be given to that.

The words "discharged from the service, except by way of punishment for an offense," are found in the acts of March 3, 1799, c. 48, § 25, 1 Stat. 755; March 16, 1802, c. 9, § 24, 2 Stat. 137; January 11, 1812, c. 14, § 22, 2 Stat. 674; and January 29, 1813, c. 16, § 15, 2 Stat. 796. See further the acts of April 12, 1808, c. 43, § 5, 2 Stat. 483; March 3, 1815, c. 79, § 4, 3 Stat. 225; July 22, 1861, c. 9, § 5, 12 Stat. 269; July 29, 1861, c. 24, § 4, 12 Stat. 280; June 20, 1864, c. 145, § 8, 13 Stat. 145; March 16, 1896, c. 59, 29 Stat. 63; June 7, 1900, c. 860, 31 Stat. 708; February 8, 1901, c. 342, 31 Stat. 762. The phrase, "honorably discharged," seems first to have appeared in the Revised Statutes, and to have been amended back to the ancient form in three years. Except for that short intervening time, the allowance of travel-pay and commutation of subsistence has gone on under the early words and the practical construction of them to which we have referred.

It follows that the only question is whether the meaning of the long used phrase is too clear for almost equally long established practice to control. It seems to us not to be so. It is quite true that in the military service the word "discharge" is the word applied to an order ending the service of an officer at his own request. But in other connections it conveys the notion of a movement beginning with the superior and more or less adverse to the object, as, for instance, when we speak of discharging a servant. Usually it is a slightly discrediting verb. If it is taken in its ordinary meaning here, the exception in case of a discharge by way of punishment raises no difficulty, because a discharge on resignation is not within the meaning of the principal clause. The course of the departments has amounted to no more than interpreting the word in this exact sense.

Enlisted men are given similar allowances by § 1290 and the earlier statutes cited. By the act of June 7, 1900, c. 860, 31 Stat. 708, when the Secretary of War, in the exercise of his discretion, has directed the discharge "of any enlisted men . . . and the order . . . stated that such enlisted men were entitled to travel pay," such order is to be sufficient authority for payment of the allowances under § 1290. This recognizes that it is usual to state in the order whether the soldier is entitled to travel pay or not, and seems to accept existing practices as they are. It has no

effect upon the cases before us further than as another slight indication of the understanding in the service. But taking everything into account we are not prepared to overturn the long-established understanding of the departments charged with the execution of the law.

Judgment reversed.

The United States, Appellant,
vs.
Peter W. Barnett. } No. 235.

This is the case of an enlisted man who makes a claim similar to the above, under Rev. Stat. § 1290, as amended. He was discharged on his own application, and the order of discharge stated that he was not entitled to travel pay. The foregoing reasoning also governs this case.

Judgment reversed.

True copy.

Test:

Clerk Supreme Court, U. S.